

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Lloyd Allen, President
Allen Logging Co.
176462 Highway 101
Forks, WA 98331

TSCA-10-2002-0035

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

Lisa Hwelsdonk 1-23-02

C. Signature

[Signature] ☒ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

JAN 23 2002

"SWAT Unit"

"OWCM"

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7000 0600 0027 0473 8879

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

TSCA-10-2002-0035

(Nye)

Daniel L. Duncan
Regional PCB Program Manager
US Environmental Protection Agency
1200 Sixth Avenue - WCM-128
Seattle, WA 98101

JAN 23 2002

"SWAT Unit"

"OWCM"

10101+3123





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

January 22, 2002

Reply To
Attn Of: WCM-128

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lloyd Allen, President
Allen Logging Co.
176462 Highway 101
Forks, Washington 98331

Re: Allen Logging Co.
Toxic Substances Control Act
Docket No. TSCA-10-2002-0035

Dear Mr. Allen:

Enclosed is a Complaint for the assessment of a civil penalty that has been filed against the Allen Logging Co. (Respondent) by the United States Environmental Protection Agency (EPA). EPA proposes a penalty of \$19,800. A copy of the Penalty Policy utilized by the EPA, the Consolidated Rules of Practice, and Small Business Policy that apply to this Complaint are also enclosed.

EPA has alleged that Respondent violated provisions of the PCB (polychlorinated biphenyl) Regulations issued under the Toxic Substances Control Act (TSCA). Respondent has 30 days to do one of the following:

1. arrange a settlement conference and request and receive a written extension of time;
2. file a written Answer and request a hearing with an administrative law judge; or
3. pay the proposed penalty.

The specific procedures for each of the three options are explained in the Complaint. If Respondent fails to take one of the actions outlined above, a default order could be entered against it. After entry of an order of default, a penalty can be assessed without further notice.

We are available to discuss with Respondent the alleged violations and proposed penalty. Such discussions may result in settlement which would make the filing of a written answer unnecessary. Richard Mednick, Associate Regional Counsel, is the attorney handling this Complaint for EPA. If Respondent wants to arrange for a settlement conference, request a time extension, or has any questions, Mr. Mednick may be reached at (206) 553-1797.

Sincerely,

A handwritten signature in cursive script that reads "Montel Livingston".

Montel Livingston, Manager
Solid Waste and Toxics Unit

Enclosures

1
2
3
4
5
6
7
8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9
10
11

12 **In the Matter of:**

13 **Allen Logging Co.**

14 **Respondent.**
15

)
) **DOCKET NO. TSCA-10-2002-0035**
)

) **COMPLAINT**
)

16
17 **I. JURISDICTION**

18 1. This administrative action is instituted pursuant to Section 16(a) of the Toxic
19 Substances Control Act (TSCA), 15 U.S.C. § 2615(a), for the assessment of a civil penalty
20 against Allen Logging Co. (Respondent). Complainant, Region 10 of the United States
21 Environmental Protection Agency (EPA), has been delegated the authority to institute this
22 action.

23 2. Respondent is a "person," as that term is used in Section 16 of TSCA, 15 U.S.C.
24 § 2615, and defined at 40 C.F.R. § 761.3, who failed to comply with the Federal regulations
25 pertaining to the use and disposal of polychlorinated biphenyls (PCBs). These regulations
26 were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605 (e), and are set forth at

27 **COMPLAINT**
28 **Docket No. TSCA-10-2002-0035**
Page 1 of 7

U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

1 40 C.F.R. Part 761. According to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for
2 Respondent to fail to comply with these regulations.

3 II. FACTS

4 3. On September 27, 2000, EPA conducted an inspection at a facility owned and
5 operated by Respondent in Forks, Washington. The purpose of the inspection was to
6 determine compliance with Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the PCB regulations
7 at 40 C.F.R. Part 761.

8 4. A building at the facility was utilized by Respondent for the storage of PCB
9 capacitors. Some of these PCB capacitors were eventually disposed of by Respondent. There
10 was no marking on the building indicating that PCB Items were stored in this area. There was
11 no curbing in the storage for disposal area. Respondent had not notified EPA of any PCB
12 waste handling activity nor obtained an EPA identification number for such activity.

13 5. Respondent disposed of PCB capacitors in a boiler at the facility. The boiler was not
14 approved by EPA for the incineration of PCBs.

15 III. VIOLATIONS

16
17 6. COUNT ONE: According to 40 C.F.R. §§ 761.205(a)(2) and 761.202, a generator or
18 disposer of PCB waste may not conduct any PCB waste handling activities without having
19 notified EPA by filing Form 7710-53, and without having obtained an EPA identification
20 number. Respondent was a generator and disposer of PCB waste, but failed to notify EPA by
21 filing Form 7710-53 and failed to obtain an EPA identification number. As a result,
22 Respondent violated 40 C.F.R. §§ 761.205(a)(2) and 761.202.

23 7. COUNT TWO: Respondent stored PCB Items in an area of a building which did not
24 meet the criteria for a storage unit established at 40 C.F.R. § 761.65(b). The PCB Items were
25 being stored for disposal, but the storage area did not have curbing for the containment of
26 PCBs and was not marked to indicate the presence of PCBs. As a result, Respondent violated

1 40 C.F.R. §§ 761.65(b)(1) and (c)(3).

2 8. COUNT THREE: Respondent did not obtain approval from EPA for the
3 incineration of PCB capacitors in a boiler at the facility. As a result, Respondent violated 40
4 C.F.R. § 761.70(d).

5 9. COUNT FOUR: PCB capacitors were incinerated by Respondent in a boiler. These
6 PCB capacitors were not disposed of in an incinerator that complies with 40 C.F.R. § 761.70.
7 As a result, Respondent violated 40 C.F.R. § 761.60(a).

8 **IV. PROPOSED CIVIL PENALTY**

9 10. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes a civil penalty of up to \$27,500
10 per day for each violation of TSCA. Based upon the violations alleged in this Complaint, the
11 nature, circumstances, extent, and gravity of these violations, Respondent's ability to pay,
12 effect on Respondent's ability to continue to do business, Respondent's lack of history of prior
13 such violations, the degree of Respondent's culpability, and such other matters as justice
14 requires, Complainant proposes that Respondent be assessed a penalty of \$19,800. This
15 penalty amount has been calculated in accordance with the "Polychlorinated Biphenyls (PCB)
16 Penalty Policy", dated April 9, 1990. A copy of this policy, along with a copy of the Small
17 Business Policy, are being provided to Respondent along with this Complaint.

18 11. VIOLATION ONE pertains to a non-disposal requirement. According to the PCB
19 Penalty Policy, the extent of the failure of Respondent to provide notice to EPA by filing Form
20 7710-53, to obtain an EPA identification number was "Minor". The circumstances or
21 probability of damages was "High Range Level one", because this was a "Major manifesting"
22 type of incident. Therefore, utilizing the "Gravity Based Penalty Matrix" in the PCB Penalty
23 Policy, the proposed assessed penalty for this violation is \$5,500.

24 12. VIOLATION TWO pertains to a non-disposal requirement. According to the PCB
25 Penalty Policy, the failures to provide a proper storage for disposal area was "Minor". The
26 circumstances or probability of damages was "High Range Level two", because this was a

1 "Major storage" type of incident. Therefore, utilizing the "Gravity Based Penalty Matrix" in
2 the PCB Penalty Policy, the proposed assessed penalty for this violation is \$3,300.

3 13. VIOLATION THREE pertains to a non-disposal requirement. According to the
4 PCB Penalty Policy, the failure to obtain approval from EPA for the incineration of PCB waste
5 was "Minor". The circumstances or probability of damage was "High Range Level one",
6 because this was a "Major Manifesting" type of incident. Therefore, utilizing the "Gravity
7 Based Penalty Matrix" in the PCB Penalty Policy, the proposed assessed penalty for this
8 violation is \$5,500.

9 14. VIOLATION FOUR pertains to a disposal requirement. According to the PCB
10 Penalty Policy, the extent of the failure of Respondent to properly dispose of PCBs was
11 "Minor". The circumstances or probability of damage was "High Range Level one", because
12 this was a "Major disposal" type of incident. Therefore, utilizing the "Gravity Based Penalty
13 Matrix" in the PCB Penalty Policy, the proposed assessed penalty for each of these violations is
14 \$5,500.

15 15. Taking into account all the above factors, the proposed penalty is calculated as
16 follows:

<u>VIOLATION</u>	<u>REGULATION</u>	<u>REQUIREMENT</u>	<u>PENALTY AMOUNT</u>
1	40 CFR 761.205 & 40 CFR 761.202	Failure to Notify & Obtain EPA I.D. #	\$ 5,500
2	40 CFR 761.65	Improper Storage	\$ 3,300
3	40 CFR 761.70	Failure to Obtain TSCA Permit	\$ 5,500
4	40 CFR 761.60	Improper Disposal Incineration	\$ 5,500
Total:			\$ 19,800

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

16. The "Consolidated Rules of Practice Governing the Administrative Assessment of
Civil Penalties and the Revocation or Suspension of Permits" (Rules), 40 C.F.R. Part 22,
govern this proceeding. A copy of the Rules is being provided to Respondent along with this

1 **Complaint.** Under the Rules, Respondent has the right to request a formal hearing to contest
2 any material fact set forth in this Complaint or to contest the appropriateness of the proposed
3 penalty.

4 **17.** To avoid being found in default, which constitutes an admission of all material facts
5 alleged in the Complaint and a waiver of the right to a hearing, and which will effect the
6 assessment of the above civil penalty without further proceedings, Respondent must file, with
7 the Regional Hearing Clerk, a written Answer within thirty (30) days service of this
8 Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual
9 allegations contained in this Complaint with regard to which Respondent has any knowledge.
10 Where Respondent has no knowledge of a particular fact and so states, the allegation is
11 deemed denied. Failure to deny any material factual allegation constitutes an admission of the
12 allegation. The Answer shall also state: (a) the circumstances or arguments which are alleged
13 to constitute the grounds of defense; (b) the facts which Respondent intends to place at issue;
14 and (c) whether a hearing is requested. A hearing is deemed requested should Respondent
15 contest any material fact upon which the Complaint is based or raise any affirmative defense,
16 or contend that the amount of the penalty proposed in the Complaint is inappropriate, or
17 claim that Respondent is entitled to judgment as a matter of law. The Answer must be sent to:

18
19 Regional Hearing Clerk, Region 10
20 U.S. Environmental Protection Agency
21 1200 Sixth Avenue, ORC-158
22 Seattle, Washington 98101

23 **18.** A copy of the Answer and all other documents which Respondent files in this action
24 must be furnished to Mr. Richard Mednick, Associate Regional Counsel, the attorney assigned
25 to represent EPA in this matter, at:

Office of Regional Counsel, Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

19. Failure to file an Answer or otherwise properly respond to this Complaint may result in a default order being issued which assesses the full amount of the proposed penalty.

VI. INFORMAL SETTLEMENT CONFERENCE

20. Whether or not a hearing is requested, Respondent may contact the above-named attorney to arrange for an informal settlement conference to discuss the facts of this case, the amount of the proposed penalty, or the possibility of settlement. Any informal settlement conference does not, however, affect the obligation of Respondent to file a timely written Answer, which is due within thirty (30) days of receipt of this Complaint, unless Complainant and Respondent agree to a later date.

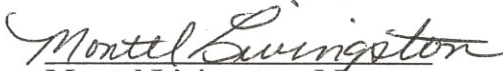
21. Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order entered into by and between EPA and Respondent would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Administrator.

22. Respondent is advised that, after the Complaint is issued, the Rules prohibit any ex parte (unilateral) discussion of the merits of these or any other factually related proceedings with the EPA Regional Administrator, Administrative Law Judge, any member of the Environmental Appeals Board, or any person likely to advise these officials in the decision of this case.

VII. PAYMENT OF PENALTY

23. Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, Respondent may choose to pay the proposed penalty. In order to do this, Respondent must first establish contact with the EPA attorney named in Section V of this Complaint to arrange for the preparation of a Consent Agreement and Consent Order.

ISSUED AT SEATTLE this 17th day of January, 2002.


Montel Livingston, Manager
Solid Waste and Toxics Unit

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint, Docket Number TSCA-10-2002-0035, has been filed with the Region 10 Hearing Clerk, and that a true and correct copy (with accompanying copies of the Consolidated Rules of Practice and the Polychlorinated Biphenyls (PCB) Penalty Policy) was sent by Certified Mail Return Receipt Requested, to:

Lloyd Allen, President
Allen Logging Co.
176462 Highway 101
Forks, Washington 98331

1-22-02
DATE

Janet Pulliam
NAME

Administrative Assistant
TITLE
Solid Waste and Toxics Unit
Office of Waste and Chemicals Management
EPA, Region 10

CONCURRENCE SHEET

Administrative Complaint
Allen Logging Co.
TSCA-PCB Violations

bcc: Regional Hearing Clerk w/original of Complaint & Notice
Firm File
Operations Office Director
Daniel Duncan
Inspector: Eileen Hileman

NOTE: CLERICAL STAFF SHOULD NOTIFY ATTORNEY BY PHONE WHEN
Complaint IS MAILED

	Mednick	Duncan	Nye
INITIALS	<i>DM</i>		<i>RCN</i>
DATE	<i>1/18/02</i>		<i>1/18/02</i>

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lloyd Allen, President
Allen Logging Co.
176462 Highway 101
Forks, WA 98331

TSCA-10-2002-0035

02 JAN 25 1999
RECEIVED
JAN 21 2002
Hearings Clerk
EPA
--REGION 10 "SWAT Unit"

Is delivery address different from item 1? ☐ Yes ☒ No
If different, address below:

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

Lisa Huelsoink

B. Date of Delivery

1-23-02

C. Signature

[Signature]

☒ Agent

☐ Addressee

3. Service Type

☒ Certified Mail

☐ Registered

☐ Insured Mail

☐ Express Mail

☒ Return Receipt for Merchandise

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 0600 0027 0473 8879

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

RECEIVED

JAN 2 2002

"SWAT Unit"
"OWCM"

Allen Logging Co.

176462 HIGHWAY 101

FORKS, WASHINGTON 98331-9398

PHONE: (360) 374-6000

FAX (360) 374-9256

LOCATED 15 MILES SOUTH OF FORKS

RECEIVED

JAN 11 2002

"SWAT Unit"
"OWCM"

January 10, 2002

Montel Livingston, Manager
Solid Waste and Toxics Unit
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, WA 98101

Sir:

We are in the receipt of your letter of January 7, 2002 regarding PCBs.

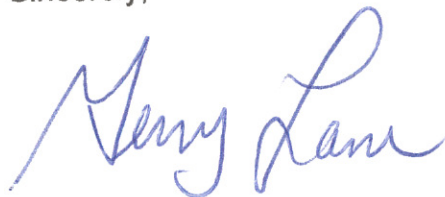
Following Ms. Hileman's inspection on August 27, 2000, we revised our PCB disposal policy to reflect compliance with current statutes.

We have ceased the incineration of PCB capacitors effective August 27, 2000.

We have had no PCB capacitors to dispose of since that date, but all future disposals will be made in compliance with current, appropriate federal requirements.

We consider ourselves to be in full compliance with PCB regulations.

Sincerely,



Gerry Lane
General Manager